

This is the second appeal in this case. On November 23, 1993 appellant, then a 38-year-old parcel post distribution clerk, filed a traumatic injury claim alleging that on June 4, 1993 she

sustained an injury to her back while throwing and tying packs of mail in the performance of her duties.¹ By decision dated April 25, 1994, the Office denied the claim on the grounds that the evidence of record failed to establish that an injury was sustained as alleged. Appellant requested a hearing, and in a decision dated January 23, 1995 and finalized on January 24, 1995, the Office hearing representative denied the claim for the reason that appellant had not submitted sufficient rationalized medical evidence to establish that her condition was causally related to the June 4, 1993 incident. In a September 19, 1997 decision, the Board remanded the case for further development of the medical evidence with regard to whether appellant's neck and back condition was employment related. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

Upon remand, the Office accepted appellant's claim for cervical and lumbosacral sprains as a result of the June 4, 1993 employment injury.

On September 7, 1999 appellant filed a claim for a recurrence of disability due to the June 4, 1993 employment injury commencing October 26, 1993. By decision dated September 30, 1999, the Office denied appellant's claim. On October 5, 1999 she requested an oral hearing. On February 7, 2000 an Office hearing representative remanded this case for further development of the evidence to resolve a conflict in medical opinion regarding whether appellant was disabled from work in October and November 1993 due to the accepted employment injury.

By decision dated March 12, 2002, the Office denied appellant's claim for a recurrence of disability on October 23, 1993 causally related to the employment injury of June 4, 1993. Appellant requested a hearing by letter dated March 19, 2002. By decision dated September 15, 2003, the hearing representative affirmed the March 12, 2002 decision. The hearing representative found that the evidence of record was insufficient to establish that appellant stopped performing her light-duty position on October 23, 1993 due to a change or worsening of her employment condition or a change in the light-duty assignment.²

By letter dated January 6, 2004 and received by the Office on January 12, 2004, appellant, through her attorney, requested reconsideration. In support of the request, appellant submitted medical records from Dr. B.L. Berlin, an orthopedic surgeon, who indicated that he initially saw appellant on December 24, 1996 with regard to a motor vehicle accident that occurred on December 2, 1996 and that she sustained multiple injuries. Dr. Berlin acknowledged that appellant sustained work-related injuries on June 4, 1993 and noted that prior to her motor vehicle accident of December 2, 1996 she had some residual symptoms. He concluded in an October 20, 2000 report that appellant's automobile accident of December 2, 1996 "exacerbated her work-related injuries which were quiescent at that time." Appellant also submitted interpretations of various magnetic resonance imaging scans and electromyograms.

¹ Docket No. 95-2016 (issued September 19, 1997). Appellant returned to work in a light-duty capacity on June 10, 1993.

² The Board notes that, although the Office hearing representative refers to a March 12, 2003 Office decision, the actual date of the decision is March 12, 2002.

Appellant also submitted progress notes by nurse practitioners and physical therapists dated from December 24, 1996 through May 12, 2001.

By letter dated April 21, 2004 and received by the Office on April 28, 2004, appellant's attorney forwarded a copy of his January 6, 2004 reconsideration request.

By decision dated July 26, 2004, the Office denied appellant's request for reconsideration without reviewing the case on the merits. The Office found that the evidence submitted was cumulative, repetitious, irrelevant or immaterial to the issue and as such was not sufficient to warrant merit review of appellant's case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³

ANALYSIS

The Office denied reconsideration of appellant's claim, finding that the medical evidence submitted on reconsideration was cumulative, repetitious, irrelevant and immaterial to the issue at hand. In its decision of September 15, 2003, the hearing representative determined that appellant had not established that she was disabled from work from October 23, 1993 to June 1994 causally related to the June 4, 1993 employment injury. The evidence submitted did not address this issue. Dr. Berlin opined that appellant's nonwork-related motor vehicle accident of December 2, 1996 exacerbated her work-related injuries which were quiescent at that time. As his report addressed a 1996 nonwork-related accident occurring after appellant's employment injury and following the date of the alleged recurrence, it is not relevant or pertinent to the issue of whether appellant sustained a recurrence of the June 4, 1993 employment injury on October 26, 1993. None of the physicians interpreting appellant's MRI scans or electromyograms gave any opinion on the issue of whether appellant's condition from October 23, 1993 until June 1994 was related to her June 4, 1993 injury. As neither a nurse nor a physical therapist is defined as a physician under the Act, these reports do not constitute relevant evidence.⁴

Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office. Further, she failed to submit relevant and pertinent new evidence not previously considered by the Office. As

³ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁴ 5 U.S.C. §§ 8101-8193, 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act); *Vicky L. Hannis*, 48 ECAB 538, 540 (1997) (a nurse is not a physician under the Act).

appellant did not meet any of the necessary regulatory requirements, she is not entitled to a merit review.⁵

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2004 is affirmed.

Issued: April 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ See *James E. Norris*, 52 ECAB 93 (2000).